THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.9627 of 2003

Dated:05.07.2007

Between:

Dorepalli Narayanaswamy, S/o.Late Satyam,
and others.

…Petitioners

and

The Spl.Deputy Collector (TW), K.R.Puram, West Godavari District,
and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.9627 of 2003

ORDER:

This Writ Petition is filed assailing the order of the first respondent in S.R.No.15 of 2002, dated 18.12.2002, whereby and whereunder, in purported exercise of power under Section 3(2) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation No.I of 1959) ('Regulation' for brevity), the first respondent herein ordered ejectment of petitioners 1 and 3 and nine others. The petitioners herein were directed to be ejected from the land admeasuring Acs.3.83 cents each in R.S.No.41/2 situated at Jainvarigudem Village of Buttaigudem Mandal in West Godavari District.

It is the case of the petitioners that their grandfather, Koppula Narayana Swamy, was the pattadar as per resettlement record of 1933. He executed a settlement deed in favour of Smt.Gangamma, grandmother of the petitioners, and the petitioners succeeded to the property to an extent of Ac.3.83 cents each in R.S.No.41/2. In 1997 the first respondent initiated action against the petitioners herein and one Dorepalli Subbayamma in S.R.Nos.208, 213, 214, 228 and 247 to 249 of 1996. The petitioners contested the matter, which were initiated at the behest of the Special Deputy Tahasildar. After considering the record, the first respondent passed orders on 28.02.1997 holding that the transactions by which the petitioners came to possession of the land are not hit by the provisions of the Regulation as amended by

Regulation I of 1970. The petitioners assert that the order has become final. Again at the behest of the third respondent as well as the Special Deputy Tahasildar-I (Tribal Welfare), K.R.Puram, the first respondent initiated action in S.R.No.15 of 2002 against eleven persons. Petitioners 1 and 3 are arrayed as respondents 5 and 6 in the said case. It appears, notices were sent under certificate of posting and except one Polnati Nagaraju and the third petitioner herein, none appeared. However, only one of the contesting respondents before the first respondent gave the deposition. After considering the matter, this time, the first respondent passed impugned order on 18.12.2002 directing ejectment of the petitioners. Aggrieved by the same, the present Writ Petition is filed.

Learned Counsel for the petitioners submits that in view of the orders passed earlier by the first respondent in S.R.No.208 of 1996 and batch, yet another proceedings could not have been initiated against the petitioners. He secondly relies on an averment contained in the counter affidavit to the effect that the land in R.S.No.41/2 alone was exempted from the application of Regulation. **Opposing** the Writ Petition, the learned Government Pleader for Social Welfare placed reliance on the decision of a Division Bench of this Court in **Special Deputy Collector, Palwancha v. Gummadapu Mohan Rao**[1] in support of the contention that when the proceedings is initiated in different circumstances by different people, principle of *res judicata* would not apply.

As seen from the impugned order, the first respondent sent notices to the petitioners at Akkampeta Village, whereas the petitioners claim that they are residents of Jainvarigudem Village. Even though the third petitioner herein appeared initially, it appears, he did not effectively participate in the enquiry before the first respondent. Therefore, virtually, the petitioners have no opportunity to raise the ground of *res judicata* based on the earlier proceedings. In this background, this Court is of the considered opinion that the matter should be considered afresh by the first respondent after giving notices to the petitioners at Jainvarigudem Village.

In view of the above, the impugned order is set aside, and the matter is remitted to the first respondent with a direction to issue notices to the petitioners and dispose of the matter afresh. It shall be open to the petitioners to raise the ground of *res judicata* along with other grounds. The first respondent shall complete the enquiry and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. There shall be *status quo* as on today.

The Writ Petition is accordingly disposed of. No costs.

(V.V.S.RAO, J)

05.07.2007
vs

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[1] 2002 (4) ALD 132 (DB)